SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 213

ERNEST CLIFTON LANGLEY,
Petitioner,

vs.

STATE OF INDIANA,
Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

JOHN J. DILLON
Attorney General of Indiana
DOUGLAS B. McFADDEN
Assistant Attorney General
MURRAY WEST
Deputy Attorney General
Attorneys for Respondent.

Office of Attorney General
219 State House
Indianapolis, Indiana
Phone 317/633-5512

C. E. Pauley & Co., Inc., Indianapolis

INDEX

	Page
Opinion Below	1
Jurisdiction	1
Questions Presented	1
Constitutional Provision Involved	2
Statute Being Questioned	2
Statement of the Case	2
Argument	
I. Time Limits to the Filing of a Motion for New Trial are not Unconstitutional	3
II. The "Speedy Trial" provision of the Constitution is not applicable in the case at bar	4
Conclusion	6

AUTHORITIES CITED

	Page
Ash v. *State*, 238 Md. 317, 208 A.2d 691 (1965)	5
Brown v. *Mississippi*, 297 U.S. 278, 56 Sup. Ct. 461 (1936)	4
Brown v. *Allen*, 344 U.S. 443, 73 Sup. Ct. 397 (1953)	4
Lott v. *Pittman*, 243 U.S. 588, 37 Sup. Ct. 473 (1917)	5
State v. *Tahash*, 277 Minn. 309, 152 N.W.2d 786 (1967)	5
Rule 33 of the Federal Rules of Criminal Procedure	3
Rule 1-13 of the Indiana Supreme Court	5

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OPINION BELOW

The opinion of the Supreme Court of Indiana is reported at 232 N.E.2d 611.

JURISDICTION

The jurisdictional requisites are adequately set forth in the petition.

QUESTIONS PRESENTED

Rule 23(j)(4) of the United States Supreme Court states as follows:

> "The failure of a petitioner to present with accuracy, brevity, and clearness whatever is essential to a ready and adequate understanding of the points requiring consideration will be a sufficient reason for denying his petition."

Under the "Questions Presented" heading on pages 2, 3 and 4 of the Petition, it is not clear as to just what Petitioner contends are the federal questions presented. Therefore, for this reason alone, the Petition should be denied. Rule 23(j)(4), supra.

The questions presented, in Respondent's view, are as follows:

1. Whether the strict 30-day time limit for filing Motion for New Trial, as imposed by Indiana law upon all criminal defendants regardless of monetary standing, is a violation of due process.

2. Whether the "speedy trial" provision of the sixth amendment applies to post-conviction proceedings.

CONSTITUTIONAL PROVISION INVOLVED

> "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial. . . ." Sixth Amendment to the U.S. Constitution.

STATUTE BEING QUESTIONED

> "The motion for a new trial and the causes therefor shall be in writing and must be filed within thirty days from the date of the verdict or finding; . . ." Burns IND. STAT. ANN. 9-1903.

STATEMENT OF THE CASE MATERIAL TO THE QUESTIONS PRESENTED

On January 15, 1962, the State of Indiana filed an affidavit charging Petitioner with Robbery.

On February 1, 1962, Petitioner pleaded not guilty to said charge.

On March 30, 1964, trial by jury was held and the jury returned a verdict of guilty of the crime of robbery.

On May 7, 1964, Petitioner filed a Motion for New Trial.

On August 3, 1965, Petitioner filed a Verified Petition for Permission To File a Belated Motion for New Trial, under Rule 2-40 of the Supreme Court of Indiana.

On September 23, 1965, the trial court overruled Petitioner's Motion for New Trial and denied Petitioner permission to file a Belated Motion for New Trial.

ARGUMENT

I.

TIME LIMITS TO THE FILING OF A MOTION FOR NEW TRIAL ARE NOT UNCONSTITUTIONAL

Petitioner seems to be contending that the 30-day time limit for filing a motion for new trial is unconstitutional. But this court itself set a time limit for the filing of motions for new trial in federal criminal cases. Rule 33 of the Federal Rules of Criminal Procedure provides as follows:

> "The court on motion of a defendant may grant a new trial to him if required in the interest of justice. If trial was by the court without a jury the court on motion of a defendant for a new trial may vacate the judgment if entered, take additional testimony and direct the entry of a new judgment. A motion for a new trial based on the ground of newly discovered evidence may be made only before or within two years after final judgment, but if an appeal is pending the court may grant the motion only on remand of the case. A motion for a new trial based on any other grounds shall be made within

seven days after verdict or finding of guilty or within such further time as the court may fix during the seven day period" (Emphasis added).

This Court has held that a "state is free to regulate the procedure of its courts in accordance with its own conceptions of policy, unless in so doing it offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental." *Brown* v. *Mississippi*, 297 U.S. 278, 56 Sup. Ct. 461 (1936).

Furthermore, in *Brown* v. *Allen*, this Court held that due process is not violated by a state's action in refusing review of conviction after defendant failed to perfect his appeal within the time prescribed, even though the appeal was perfected one day after lapse of the time period. *Brown* v. *Allen*, 344 U.S. 443, 73 Sup. Ct. 397 at 421 (1953). See also 21 Am. Jur. 2d, Criminal Law, Sec. 227, footnote 13.

Petitioner in the case at bar has not shown in any way that a statute imposing a time limit on filing motions for new trial is unconstitutional.

II.

THE "SPEEDY TRIAL" PROVISION OF THE CONSTITUTION IS NOT APPLICABLE IN THE CASE AT BAR

Petitioner apparently is contending that he was denied a right to "speedy trial" because the trial judge waited 14 months before ruling on his Motion for New Trial. He seems to be contending that "speedy trial" means speedy appellate review, and he cites the 6th Amendment to the U.S. Constitution to support his contention. First of all, the "speedy trial" provision only applies to the time between the arrest and the trial, not between the time of trial and the ruling on the motion for new trial. Secondly, there is

no *constitutional right* to appeal. *Lott* v. *Pittman*, 243 U.S. 588, 37 S.Ct. 473 (1917). So, logically, the "right to speedy trial" cannot be extended to include the right to speedy appellate review.

In *Ash* v. *State*, 238 Md. 317, 208 A.2d 691 (1965), the defendant contended that he was deprived of his constitutional right to a speedy trial because a long period of time elapsed from the filing of his motion for new trial to the time it was ruled on. In *Ash*, the Maryland court held that a "motion for new trial or hearing thereon do not constitute a 'trial' or any constituent part thereof within the meaning of the constitutional requirement of a right to speedy trial."

In *State* v. *Tahash*, 277 Minn. 309, 152 N.W.2d 786 at 789 (1967), the Minnesota Supreme Court held that the "right to speedy trial does not include a right to speedy appellate review within the sense of the Sixth Amendment."

Furthermore, Appellant had his remedy by way of Indiana Supreme Court Rule 1-13 (the Lazy Judge Rule) which provides, in part, as follows:

> "Whenever any issue of law or fact shall hereafter be submitted to the court for trial, ruling, or decision, and the judge shall take the same under advisement, the court shall not hold the same under advisement for more than ninety (90) days . . . Provided, that if the judge shall fail to determine any issue of law or fact within the time reserved, then upon written application of any of the parties to the action or their attorneys of record duly filed in the office of the clerk of said court and called to the attention of said judge before the announcement of the decision of the issue in question, the submission of said issue shall thereupon be withdrawn and the judge before whom said cause is pending shall be disqualified to hear or determine any of the issues in said cause, and a special judge shall be appointed to take jurisdiction thereof under

> the same rules and regulations prescribed by law in cases where the judge is disqualified for hearing a given cause."

Petitioner did not assert his rights under the aforesaid Rule 1-13. Therefore he has no cause to complain now.

CONCLUSION

The petition fails to present a federal question of sufficient substance to warrant a granting of a writ of certiorari to the Supreme Court of Indiana and said petition should therefore be denied.

Respectfully submitted,

JOHN J. DILLON
Attorney General of Indiana

DOUGLAS B. MCFADDEN
Assistant Attorney General

MURRAY WEST
Deputy Attorney General

Attorneys for Respondent.